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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Abraham S. et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.S. et al.,

Defendants and Appellants.

B293645

(Los Angeles County
Super. Ct. No. CK84801B-C)

APPEAL from orders of the Superior Court of Los Angeles County. Michael E. Whitaker, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant A.S.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant B.S.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Peter Ferrera, Principal Deputy
County Counsel, for Plaintiff and Respondent.

* * * * *

Father A.S. appeals the juvenile court's orders denying his Welfare and Institutions Code section 388¹ petitions to reinstate reunification services, and terminating his parental rights to his children, Abraham and Ariel. Father contends the juvenile court erroneously failed to grant him a hearing on his petitions, his circumstances changed, and that the parental relationship exception to the termination of parental rights applied. Mother B.S. joins in father's arguments, and also argues the court erred in finding Abraham generally adoptable, given his developmental delays, and that he was not specifically adoptable given the prospective adoptive parents' limited knowledge of his needs. We find no merit in any of the parents' contentions and affirm.

BACKGROUND

The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) on February 16, 2015, after mother was arrested for punching father in the nose as she was driving. Abraham, who was only two months old at the time, and an older half sibling (who is not at issue in this appeal), were in the back seat of the car during the incident. When mother took father to the hospital for treatment, police were summoned by hospital staff.

A Department social worker responded to father's home, where he lived with mother, paternal great-grandmother,

¹ All further statutory references are to the Welfare and Institutions Code.

paternal grandmother, and paternal grandfather. Mother's older child lived with his father.

Father admitted that mother had hit him, but claimed it was a "misunderstanding" and that mother's "emotions got the best of" her. When mother took father to the emergency room, he lied and told staff there that he got "jumped." He denied any history of domestic violence, and planned to bail mother out of jail. He agreed to not let mother back in the home, and to supervise her contact with Abraham.

Mother and father had been seeing a counselor to address their relationship problems, but had stopped going. According to the counselor, mother is the "aggressor" in the relationship, and may suffer from mental health issues. Father told the counselor he was afraid of mother.

Father bailed mother out of jail. The City Attorney declined to prosecute the domestic violence case against mother.

The Department interviewed mother on February 18, 2015. She reported that father wanted her to come home, but was afraid of losing custody of Abraham. She admitted to hitting father while she was driving, and that the children were present.

Mother has a history with the Department. She had a dependency case in 2010, following her arrest for domestic violence against her then husband, in the presence of their child. The court terminated jurisdiction in February 2012, awarding the parents joint custody of the child. After the case closed, mother ended her relationship with her husband, and married father.

At the February 24, 2015 Child and Family Team meeting, mother and father reported they resumed living together because mother "has nowhere else to go."

The Department removed Abraham from mother and father on February 26. Mother informed the Department she was pregnant.

At the March 3, 2015 detention hearing, Abraham was detained and placed with a maternal uncle. Father was ordered to receive unmonitored visitation with Abraham.

According to the Department's April 2015 jurisdiction/disposition report, Abraham was placed with a foster family because maternal uncle could no longer care for him. On March 31, 2015, mother confirmed that she and father were still romantically involved, although they were now living separately.

In a March 31 interview with the Department, father admitted mother "hit him all the time" and he did not call police. Nevertheless, he was committed to his relationship with mother, and wanted to keep his family together.

At the May 14, 2015 adjudication/disposition hearing, the court sustained the allegations in the petition based on domestic violence between mother and father, removed Abraham from mother's custody, and placed him with father, with orders for family maintenance services. Father was ordered to participate in a domestic violence program for victims, and conjoint counseling with mother. Visitation for mother was to be monitored, but not by father.

The Department stated in its October 2015 status review report that father had not enrolled in therapy with mother as he was not interested in continuing his relationship with her. Mother told the Department she and father planned to divorce.

In October 2015, baby Ariel was born. Mother gave father custody of Ariel as she was unable to care for her.

Between October 2015 and May 2016, father was only in partial compliance with his case plan, as he had not started his domestic violence program. Father was taking good care of the children, but repeatedly told the Department he wanted to reunite with mother.

In March 2016, there was another domestic violence incident between mother and father. Father allowed mother into the home, and mother began screaming about infidelity in front of the children. Father did not call police because he was scared he would lose custody of the children.

On June 16, 2016, the Department filed a dependency petition for Ariel, based on the history of domestic violence between mother and father, and Abraham's dependency. At the June 16, 2016 detention hearing, the court detained Ariel from mother, and released her to father.

The Department's subsequent reports revealed that mother and father had resumed their relationship, and were participating in conjoint counseling. According to mother, they were living in separate residences.

On August 3, 2016, a supplemental petition was filed for Abraham, alleging father allowed mother to have unmonitored access to Abraham in violation of the court's orders.

Medical records for Abraham and Ariel revealed that mother had been present at many of their doctor's appointments with father, and had also attended medical appointments alone with the children. When a social worker made an unannounced visit to one of Abraham's routine medical appointments, she found mother alone with both children. Mother explained that father was working, and it was an "emergency." According to father, he did not have enough support with the children, so he

took the risk and enlisted mother's help. Father admitted that he had been allowing mother to come to the home to visit the children. Mother later admitted that she and father had been living together since Ariel's birth.

On August 3, 2016, the court detained the children from father, and ordered that his visitation be monitored. The children were placed in foster care.

The petition as to Ariel and the supplemental petition as to Abraham were adjudicated on August 8, 2016. The allegations were sustained, and the children were removed. Mother and father were ordered to receive family reunification services. Their visitation was to be monitored, and the parents were not to visit together.

Abraham's August 2016 developmental screening revealed significant developmental delays. Ariel's screening also revealed delays with problem solving and personal social skills. The Regional Center found Ariel ineligible for services, but Abraham qualified for speech therapy.

The parents' relationship continued to be volatile. According to mother, she moved out of father's home on August 22, 2016 because father had become abusive. They were not currently going to counseling together because father did not want to attend. Father told the Department he wanted to end his relationship with mother, and that she was harassing him. The social worker advised father to obtain a restraining order, but he just made excuses and did not follow through.

When the social worker followed up with father, he told her he had started speaking to mother again, and wanted conjoint therapy with mother. Father was making minimal progress with his services.

According to the Department's August 2017 status review report, the children remained placed with the same foster parents, and continued to do well in their care. Abraham was receiving services at the Regional Center. His Early Start Individualized Family Service Plan evaluation noted significant delays with his cognitive, social, and emotional development, communication, and fine motor skills.

Mother and father were receiving individual and conjoint therapy from the same provider. However, following an incident in July 2017 where mother threatened father and the therapist, the therapist terminated them from her program. The therapist reported that mother has "violent tendencies" and characterized the relationship as "dangerous."

Father was terminated from his domestic violence program for nonattendance. He and mother were living together, and father claimed mother had made a lot of progress.

The Department recommended a concurrent plan of adoption, and that parents' reunification services be terminated.

At the September 5, 2017 contested review hearing, father testified that he and mother were terminated by their last therapist because she "misinterpreted" something mother said. He also denied that mother threatened him, or that he was afraid of her. He had reenrolled in a domestic violence support group on August 25, 2017, and he and mother had started working with a new therapist.

The court terminated reunification services, finding that mother and father made minimal progress in their case plans, and set a section 366.26 permanency planning hearing.

The Department's section 366.26 report noted that Abraham and Ariel were placed with the same foster parents, but

they were not committed to adopting the children. The Department was trying to find an adoptive placement, and had found a possible match.

Abraham continued to receive services at the Regional Center, and had been diagnosed with autism.

As of December 20, 2017, father had completed 16 sessions of his domestic violence program, and mother and father were participating in conjoint therapy. Their therapist believed they were making good progress, and that they should be allowed to visit the children together.

At the March 12, 2018 permanency planning review hearing, the court gave the Department discretion to allow the parents to visit together.

In April 2018, the Department reported that mother and father were not consistently attending counseling for financial reasons, as they both had lost their jobs. According to their counselor, mother and father experienced a lot of stress in their relationship when they were not working. There were still conflicts in their relationship.

The Department had matched the children with a prospective adoptive family, Mr. and Mrs. D. The children visited with them on March 28, 31, and April 21, 2018, and the visits went very well. The children were comfortable with them, and called them “mommy” and “daddy.” The Department social worker provided the prospective adoptive parents with “all pertinent information” about the children.

The children were placed with the prospective adoptive family on May 11, 2018. Mr. and Mrs. D. had an approved adoptive home study, and were working with the Regional Center to obtain services for Abraham. The children had adjusted well

to their placement, and were very affectionate with Mr. and Mrs. D.

On June 14, 2018, father filed a section 388 petition seeking reinstatement of reunification services and unmonitored visitation. According to a progress report from his domestic violence group, he had completed 30 support group sessions, and participated well in the sessions. His therapist provided a letter indicating that he had participated in 15 couples therapy sessions, starting in August 2017. The court set the petition for hearing on July 13, 2018.

The Department opposed father's section 388 petition. Since the children were placed with their prospective adoptive family, father had only visited four times, because the placement was in a different county. He wanted to visit more, but could not afford to travel to see them. The Department initially provided him with a bus pass, but after he missed his first scheduled visit, it would not provide another one.

Before the children were moved out of county, father generally visited them once per week, and according to the social worker's reports, father was attentive to the children and interacted well with them. However, his visits remained monitored.

Mother and father had stopped their conjoint counseling in June 2018. Mother and the therapist had a disagreement, so mother refused to see her any longer. Father was still participating in his domestic violence sessions.

Father testified at the section 388 hearing that he and mother were still in a relationship, but he was willing to leave her if he could get his children back. Father was currently living

with mother, but paternal grandmother was in the process of evicting her.

Regarding visitation, father travels to Bakersfield every other Friday to see the children. His visits were still monitored. His children call him “daddy.” When he leaves after the visits, the kids look “kind of sad.”

The juvenile court denied the petition, without prejudice, finding father had not demonstrated changed circumstances.

On August 22, 2018, father filed a second section 388 petition, seeking reinstatement of reunification services. According to the petition, father had ended his relationship with mother, obtained a temporary restraining order against her, evicted her from paternal grandmother’s home, and was filing for divorce. The trial court set the petition for hearing on October 25, 2018. Father did not file for dissolution of marriage until October 4, 2018.

The Department’s September 10, 2018 status review report noted that mother and father got into a “big fight” on July 26, and the police were summoned. Prior to this fight, they were still living together at paternal grandmother’s home.

According to the Department’s supplemental section 366.26 report, the children’s caregivers remained committed to adopting them, and they were doing well in their placement. Abraham was receiving Applied Behavioral Analysis therapy and speech therapy. The prospective adoptive parents “have the capacity to meet all of Abraham’s and Ariel’s special needs. The couple agrees to cooperate fully with the Regional Center. . . .” The prospective adoptive parents were attempting to receive services for Abraham’s autism.

The Department's October 25, 2018 review report noted that father had not visited the children since August 10, 2018. Of 17 scheduled visits, mother and father only attended two visits together, and one visit separately. When father did visit, he was attentive and loving, but had a hard time setting limits.

Father continued to attend his domestic violence program, twice per month. He had started a new relationship, but would not discuss it with the Department, claiming that his personal life was "no[ne] of [their] business." According to the Department, father brought his girlfriend to court hearings, causing friction with mother. The girlfriend told a social worker that she and father were engaged after only one month of dating. Father's girlfriend and her children were being investigated by the Department.

Mother reported that father was romantically involved with his cousin.

Notwithstanding the temporary restraining order, mother and father visited the children together on October 19, 2018. Father arrived while mother's visit was underway, and mother invited him to join in the visit. This was the first time father visited the children since August.

On October 25, 2018, the trial court held a hearing on father's section 388 petition and request for a permanent restraining order, and conducted the permanency planning hearing.

Mother testified the children called their foster parents mom and dad. Regarding the October 19 visit that she and father attended, mother admitted she knew there was a restraining order. She was throwing a birthday party for Ariel and father showed up. She had not expected to see father there.

She stayed away from him, but he approached her, and they talked.

Father testified that he arrived at the October visit early because of the bus schedule. He did not know mother would be there and thought her visit was after his. He approached her because he thought it was his time to visit. Other than that, they avoided each other. He was no longer involved with mother.

Regarding visitation, father testified that he played with the children when he visited them. The children call him “dad.” Ariel is excited to see him when he visits. Because of his autism, Abraham did not pay that much attention to father. Father was unaware of what services Abraham was receiving for his delays. He also did not know if Ariel was attending preschool.

The court denied father’s section 388 petition, denied his request for a permanent restraining order, found the children adoptable, and terminated parental rights.

Mother and father timely appealed.

DISCUSSION

1. Section 388 Petition

Father contends the juvenile court erred by summarily denying his section 388 petitions without a hearing. He also contends the court abused its discretion when it denied his second petition seeking additional reunification services because his circumstances had changed, and the requested order was in the best interests of the children.

Father is mistaken. The court did not summarily deny his section 388 petitions without hearing. The court held hearings on the petitions on July 13 and October 25, 2018, took evidence and argument, and denied the petitions on their merits. This contention is baseless.

We find no abuse of discretion. A parent who petitions to modify an existing dependency court order under section 388 must show, by a preponderance of the evidence, both changed circumstances and that the modification would be in the child's best interest. (§ 388; Cal. Rules of Court, rule 5.570(e), (h); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47, 48.) A change of circumstances "must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.) A trial court has discretion in determining changed circumstances and the child's best interest, and a reviewing court will not disturb the trial court's decision unless the trial court abused its discretion by making an arbitrary, capricious, or patently absurd determination that exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

At the July 13 hearing on father's first section 388 petition, father was still involved with mother, but pledged he would leave her if the court gave him a second chance. When that did not persuade the court, he filed his second petition, just two months later. Father and mother continued to live together, and police responded to yet another domestic violence incident between them on July 26. Father did not file for divorce until three weeks before the October 25 hearing on his second petition. Sometime before the hearing on the second petition, father obtained a temporary restraining order against

mother, but he had contact with mother in violation of the temporary restraining order on October 19. Over the years this case was pending, father repeatedly minimized mother's conduct, lied to the Department, and displayed more commitment to his volatile relationship with mother than to his children. He repeatedly claimed to end his relationship with mother, only to resume it again. Father clearly did not benefit from the extensive reunification services he had already received. Under these circumstances, we can find no abuse of discretion.

2. Termination of Parental Rights

Father contends the parental relationship exception to the termination of parental rights applies here.

If the court finds that a child should remain out of the custody of the parent and has terminated reunification services, the court shall terminate parental rights unless the court finds that termination would be detrimental to the child. One such circumstance exists where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) It is the parent's burden to show that termination of parental rights would be detrimental. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) "To meet the burden of proof . . . , the parent must show more than frequent and loving contact or pleasant visits. [Citation.] . . . [Citation.] The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]" (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953-954.) The relationship between the parent and child must be sufficiently significant that the child

would suffer detriment from its termination. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.)

The court must balance the strength and quality of the parent-child relationship against the security and sense of belonging that a stable family would confer on a child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.) “If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

All of father’s visitation with Abraham and Ariel over the last two years of the dependency was monitored. Father had a difficult time setting boundaries, and knew almost nothing about his children’s lives. Even though the children shared a bond with father, this bond did not outweigh the benefits the children would achieve from the permanency of adoption by foster parents who were meeting their needs and to whom they were strongly bonded. We therefore find no error.

3. Adoptability

Mother contends that Abraham was not generally adoptable due to his developmental delays, and that he was not specifically adoptable because the record did not disclose that the prospective adoptive parents were fully informed about the extent of his condition.

“A juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citation.] The ‘likely to be adopted’ standard is a low threshold. [Citation.] On review, ‘we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted

within a reasonable time. [Citations.]” [Citations.] We give the court’s finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. [Citation.]’ [Citation.]” (*In re J.W.* (2018) 26 Cal.App.5th 263, 266-267.)

A child is generally adoptable if the child’s age, physical condition, mental state, and other factors make it likely that the child will be adopted within a reasonable time by either a prospective adoptive family or another family. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1526; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) A child is specifically adoptable “ ‘where the child is deemed adoptable based solely on the fact that a particular family is willing to adopt him or her’ ” (*In re I.W.*, at p. 1526; accord, *In re J.W.*, *supra*, 26 Cal.App.5th at pp. 267-268.)

That there is a prospective adoptive parent “ ‘is evidence that the child’s age, physical condition, mental state, and other matters relating to the child are not likely to discourage others from adopting the child.’ [Citation.] [¶] In other words, ‘[w]hile, generally, the present existence or nonexistence of prospective adoptive parents is, in itself, not determinative, it is a factor in determining whether the child is adoptable.’ [Citation.] As one court has explained, ‘in some cases a minor who ordinarily might be considered unadoptable [because of] age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child.’ [Citation.]” (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1526.)

Here, Abraham and Ariel were placed with prospective adoptive parents who were committed to adopting them, and had

an approved home study. The record shows the Department fully informed them of Abraham's autism and delays, and that they were working hard to obtain the necessary services for him.

“ ‘ “[I]t is only common sense that when there is a prospective adoptive home in which the child is already living, and the only indications are that, if matters continue, the child will be adopted into that home, adoptability is established. . . .” ’ [Citation.]” (*In re J.W.*, *supra*, 26 Cal.App.5th at p. 268.) We find no error.

DISPOSITION

The orders are affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.